116 485

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 111.

MATTHEW J. LAUGHLIN, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 14, 1882.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 111.

MATTHEW J. LAUGHLIN, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Date of filing of original petition and of its omission from this record noted	1	1
Motion to omit original petition and certify amended petition in lieu thereof, and to omit specifications in contract and allowance of same	1	1
Amended petition by leave of court filed October 3, 1881, and exhibits thereto	2	1
Traverse of amended petition filed December 9, 1881	12	8
Findings of fact and enclusion of law	13	9
Opinion of the court	15	11
Judgment of the court	18	14
Application for allowance of appeal	18	14
Certificate	19	15

JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 In the Court of Claims. December Term, 1879.

MATTHEW J. LAUGHLIN
versus
THE DISTRICT OF COLUMBIA. } No. 31.

I. The original petition of Matthew J. Laughlin *v.* The District of Columbia, No. 31, was filed July 28, 1880, and is omitted from this record pursuant to the following motion of claimant's counsel, filed and allowed October 11, 1882.

JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

II. *Motion to Omit Original Petition and Certify Amended Petition in Lieu thereof, and to Omit Specifications in the Contract Filed Oct.* 11, 1882, *and Allowance of Same.*

To the honorable the judges of said Court:

2 Your petitioner asks leave to omit from the record in this cause the original petition and specifications in the contract, and have the clerk to certify the amended petition in lieu thereof, as the amended petition contains the substance of the original.

V. B. EDWARDS,
Attorney for Claimant.

At Chambers.

Allowed. C. D. DRAKE,
Chief Justice.

III. *Amended Petition by Leave of Court. Filed Oct.* 3, 1881.

To the honorable judges of the United States Court of Claims:

Your petitioner respectfully represents—

That he entered into written contracts with the Board of Public Works of the District of Columbia, dated August 18, 1873, and September 19, 1873, made part of this petition, and marked Exhibits A & B, Nos. 863 and 904.

That petitioner's accounts for work done under said contracts were audited, and petitioner received the following certificates in the words and figures following, viz:

[No. 4426.]

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *December* 10, 1873.

I hereby certify that I have this day audited and allowed the account of Evan's Concrete Co., per M. J. Laughlin, for setting curb on G street between 18th and 22d streets west, amounting to five hundred and ninety-seven dollars.

$597.

(Signed) J. C. LAY, *Auditor.*

Endorsed: M. J. Laughlin.

Across face: "Cancelled by Board of Public Works."

3 [No. 4763.]

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *December* 24, 1873.

I hereby certify that I have this day audited and allowed the account of M. J. Laughlin, per J. F. Murray, attorney, for work as per schedule, amounting to fifteen hundred dollars.

$1,500.

(Signed) J. C. LAY, *Auditor.*

Endorsed: For value received, the within debt is assigned and transferred to N. A. Cowdry, who is authorized to collect the same to his own use. (Signed) M. J. Laughlin, per J. F. Murray, attorney. Witness, E. Behrens.

[No. 4764.]

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *December* 24, 1873.

I hereby certify that I have this day audited and allowed the account of M. J. Laughlin, per J. F. Murray, attorney, for work as per schedule, amounting to six thousand dollars.

$6,000.

(Signed) J. C. LAY, *Auditor.*

Endorsed: For value received, the within debt is assigned and transferred to N. A. Cowdry, who is authorized to collect the same to his own use. (Signed) M. J. Laughlin, per J. F. Murray, attorney.

[No. 4766.]

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *December* 24, 1873.

I hereby certify that I have this day audited and allowed the account of M. J. Laughlin, per J. F. Murray, attorney, for work as per schedule, amounting to five thousand dollars.

$5,000.

(Signed) J. C. LAY, *Auditor.*

4 Endorsed: For value received, the within debt is assigned and transferred to N. A. Cowdry, who is authorized to collect the same to his own use. (Signed) M. J. Laughlin, per J. F. Murray, attorney.

[No. 4767.]

OFFICE AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *December* 24, 1873.

I hereby certify that I have this day audited and allowed the account of M. J. Laughlin, per J. F. Murray, attorney, for work as per schedule, amounting to two thousand dollars.

$2,000.

(Signed) J. C. LAY, *Auditor.*

Endorsed: For value received, the within debt is assigned and transferred to N. A. Cowdry, who is authorized to collect the same to his own use. (Signed) M. J. Laughlin, per J. F. Murray, attorney.

Your petitioner demanded payment from the treasurer of the Board of Public Works, but said treasurer refused to pay the said certificates in the lawful money of the United States.

Your petitioner avers that said certificates were left with one Blumenberg (or Mandel) as collateral security for the payment of a certain note, running 30 to 60 days, and amounting to about 33 per cent. on the dollar. That said petitioner, before the maturity of said note, called at the former place of business of said Blumenberg to pay the debt and take up his note and certificates, but he was informed that said Blumenberg had absconded, and no one at his place of business knew when he had left or whither he had gone, or when he would return. Your petitioner could not find him, or any one representing him, and could not find his note or certificates; and your petitioner has not received from said District of
5 Columbia any pay for said certificates. Your petitioner called on the treasurer of the Board of Public Works of the District of Columbia and notified him of the facts; he filed a written protest, which is made part hereof and marked Exhibit C; that prior to the written protest he made an oral protest, notifying the treasurer aforesaid not to pay said certificates to any one else.

Your petitioner avers that Blumenberg disposed of said certificates, without the knowledge or consent of your petitioner, to some person or persons, who, in conjunction with him, are attempting to wrongfully use them and convert them to their own use (or have already done so), and that said certificates were not paid by the board of audit for the District of Columbia until after notice given as aforesaid.

Your petitioner prays judgment against the District of Columbia in the sum of nineteen thousand five hundred and ninety-seven dollars, with interest at 6 per cent. per annum from date of said certificates until paid.

Your petitioner further represents that no assignment or transfer of said claim, or any part thereof or interest therein, has been made; and that he is justly entitled to the amount therein claimed from the District of Columbia, after allowing all just credits and offsets, and that he has at all times borne true allegiance to the Government of the United States; that he has not in any way voluntarily aided, or abetted, or given encouragement to the rebellion against the United States; and that he believes the facts stated in this petition to be true; and that he believes that there are other certificates of various dates which he cannot now specify, which should be added, and make the sum due, as near as he can now get at, of about $25,000.

Your petitioner represents that he cannot state his case with the requisite particularity without an examination of all the certificates issued to him by the board of audit or board of public works,
6 and he has been unable to obtain a sufficient examination of the same. He therefore requests that the Commissioners of

the District of Columbia deposit all the original certificates, now in the possession of said District, with your honorable court, as provided by the act of Congress approved June 16, 1880.

M. J. LAUGHLIN.

M. BLAIR, *Counsel.*
V. B. EDWARDS, *Attorney.*

DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

Matthew J. Laughlin personally appeared before me and made oath according to law that no assignment or transfer of said claim or any interest therein has been made, and that he believes he is justly entitled to the amount therein claimed from the District of Columbia, after allowing all just credits and offsets, and that he believes the facts as stated in said petition to be true.

M. J. LAUGHLIN.

Subscribed and sworn to before me, this 29th day of September, A. D. 1881.

[SEAL.] WM. G. MOORE,
Notary Public.

EXHIBIT "C."

WASHINGTON, D. C., *June* 5, 1874.

Col. Jas. A. Magruder, Treasurer B. P. W.

SIR: I do most respectfully ask of you not to pay the following auditor's certificates, dated December, 1873, issued to M. J. Laughlin, per J. F. Murray, attorney, viz:

No. 4763 for $1,500; No. 4764 for $6,000; No. 4766 for $5,000; No. 4767 for $2,000.

Also a certificate issued in the name of M. J. Laughlin, No. 4426, for $597.

Very respectfully,

JOHN F. MURRAY.

7 EXHIBIT A to amended petition.

[No. 863.]

See F. No. 1407, 1501.

This contract, made and concluded this eighteenth day of August, in the year one thousand eight hundred and seventy-three, by and between Henry D. Cooke, Alexander R. Shepherd, James A. Magruder, Adolph Cluss, and Henry A. Willard, constituting and composing the Board of Public Works of the District of Columbia, of the first part, and Mathew J. Laughlin of Washington, D. C., of the second part, witnesseth:

First. That the said party of the second part has agreed, and by these presents doth agree, with the said party of the first, for the consideration hereinafter mentioned and contained and under the penalty expressed in a bond, bearing even date with these presents, and

hereunto annexed, to furnish, at his own proper cost and expense, all the necessary materials and labor, and in a good, firm, and substantial manner to grade, set the curb-stones, and relay the brick foot pavements on Maryland avenue, between First and Second streets east, in the city of Washington, D. C.; also, to grade, set the curb-stones, lay and put down the brick foot-pavements, park, and terrace on A street north, between First and Third streets east, in the city of Washington, D. C.; the work of said grading, curbing, and brick paving to be done and completed in accordance with the specifications following, to wit:

Specifications omitted pursuant to the order as set forth above, made Oct. 11, 1882.

JOHN RANDOLPH,
Ass't Clerk C't of Claims.

8 Second. It is further agreed that the said party of the first part shall appoint, from time to time, such persons or person as may be by said party deemed proper to inspect the material to be furnished and the work to be done under this contract, and that such persons or person shall have any and all opportunity and privileges which may be necessary to enable them to faithfully make the inspection aforesaid.

Third. It is further agreed that the work under this contract shall be commenced immediately.

Fourth. It is further agreed that the said party of the first part may, on notice to the party of the second part, suspend work under this contract; but if not suspended it shall be completed, as rapidly as possible, from the date fixed for its commencement, and that the said work shall not be sublet without the consent, in writing, of the said party of the first part, and that any subletting or assignment without such consent work a forfeiture of this contract.

Fifth. It is further agreed that if, at any time, the party of the first part shall be of the opinion that the said work, or any part thereof, is unnecessarily delayed, or that the said contractor is wilfully violating any of the conditions or covenants of this contract, or is executing the same in bad faith, all of the work may be discontinued under this contract, or any part thereof; and the said party of the first part shall thereupon have the power to place such and so many persons as may be deemed advisable, by contract or otherwise, to work at and complete the work herein described, or any part thereof, and to use such materials as may be found upon the line of said work, or to procure other materials for the completion of the same, and to charge the expense of said labor and materials to the party of the second part, and the expense so charged shall be deducted and paid by the party of the first part out of such moneys as may be then due, or may at any time thereafter grow due, to the said party of the second part under and by virtue of this agreement, or any part; and in case such expense is less than the sum or sums which would have been payable under this contract, if the same had been completed, the party of the second part shall

be entitled to receive the difference; and in case such expense shall exceed the last said sum the amount of such excess shall be paid to the party of the first part by the party of the second part.

Sixth. It is further agreed that all loss or damage arising out of the nature of the work to be done under this agreement, or from any unforeseen obstructions or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from incumbrances or injuries to individuals, property, or otherwise, on the line of the work or adjacent thereto, shall be sustained by the said contractor; and the said contractor hereby agrees, in the execution of the said work as aforesaid, to keep at all times the said work properly guarded or protected, so as to prevent all injuries to persons, travellers, animals, or property, and in the event of any such injury or injuries occuring in
9 consequence of the insufficient guarding or protection of said work as aforesaid, the said party of the first part shall retain out of any money or moneys due or to become due said contractor a sum sufficient to cover all damages arising out of said injury or injuries until the same may be settled at law or otherwise.

Seventh. It is further agreed that the said party of the second part shall punctually pay the workmen who shall be employed by him on work under this contract in cash current and not in what is denominated store pay or orders; and that he will, from time to time, and as often as he may be required by said party of the first part, furnish to said party satisfactory evidence that all persons who have done work or furnished materials have been paid as herein required. And if such evidence is not furnished such sum or sums as may be necessary for such payment or claims shall be retained by said party of the first part until the said claims shall be fully satisfied.

Eighth. And it is further agreed that partial payments shall be made by the duly authorized financial agent of the said party of the first part on the monthly estimates of the chief engineer of the Board of Public Works aforesaid, and that whenever the said chief engineer aforesaid shall certify, in writing, that the party of the second part completely performed this contract on his part, and shall submit, with said certificate, his estimate of the amount due the party of the second part, then, within thirty (30) days, as hereinafter provided, the said party of the second part shall be entitled to receive the full amount due under this contract, deducting therefrom all previous partial payments which may have been made, as hereinafter mentioned.

And it is further expressly agreed that no money shall become due and payable under this contract, except upon the certificate of said engineer, as hereinbefore provided; and the said party of the second part further agree that he shall not be entitled to demand or receive payment for any portion of the aforesaid work, except in the manner set forth in this agreement; and when each and all of the stipulations hereinbefore mentioned are complied with, and the engineer shall have given his certificate to that effect, a final settlement shall be made in writing between the parties, and the whole

amount found due the party of the second part under this contract shall be paid to him, excepting such sum or sums as may be re-
retained under any provision of this contract: Provided,
10 That partial payments may be made, under direction of the
said party of the first part, otherwise than upon the estimates of the said engineer, as provided above, if, in the opinion of the said party of the first part, the vigorous prosecution of the work will be promoted thereby.

Ninth. It is further agreed that if at any time during the period of one year from the completion of the work to be done under this contract any part or parts thereof shall become defective, from imperfect or improper material, or construction, and in the opinion of the said party of the first part require repair, the said party of the second part will, on being notified thereof, immediately commence and complete the same to the satisfaction of the party of the first part; and in case of failure or neglect of the said parties of the second part so to do, the same shall be done under the directions and orders of the party of the first part at the cost and expense of the party of the second part.

Tenth. It is further agreed that the said party of the second part shall receive the following prices as full compensation for furnishing all the materials and labor which may be required in the prosecution of the whole of the work to be done under this agreement, and and in all respects completing the same, to wit: Grading thirty (30) cents for each and every cubic yard of earth, sand, or gravel excavated and hauled a distance not exceeding two hundred (200) feet, and one and a quarter (1¼) cent per cubic yard for every additional one hundred feet of haul beyond the first two hundred (200) feet.

Laying brick foot pavement (new), per square yard, one hundred (100) cents; relaying brick foot pavement (old), per square yard, twenty-five (25) cents.

Setting curb-stone, 8 inch (new), per lineal foot, forty (40) cents.

Setting curb-stone, 6 inch (new), per lineal foot, thirty (30) cents.

Setting curb stone, 5 inch (new), per lineal foot, twenty-five (25) cents.

Resetting curb-stones, 4 inch (old), per lineal foot, fifteen (15) cents.

Parking, laying sod and soil as per specifications per square yard, fifty (50) cents, which said *sums* prices the said party [of] the first part shall pay to the said party of the second part, as herein provided.

Eleventh. And it is further agreed that should any litigation arise in any way connected with the work embraced as aforesaid in this contract from or by reason of any demand or demands,
claim or claims by any person or persons to use within
11 the said District of Columbia the improvement, or payment
or payments contracted for herein to be laid and put down by the said party of the second part under or by reason of any patent or assignment of patent, either in the form of royalty or damages, or in any otherwise, the said party of the second part will indemnify and save harmless the said party of the first part from all said demand or demands, claim or claims, whether arising out

of suits or otherwise, and the said party of the first part may, at its option, retain from the amount or amounts due or to become due under this contract to the said party of the second part a sum or sums necessary or sufficient to satisfy or liquidate all of said demands or claims as aforesaid until they shall be amicably adjusted or finally determined at law.

Twelfth. It is further agreed that the measurements shall be made by the engineer of the said party of the first part or his assistants.

Thirteenth. And the said party constituting and composing the Board of Public Works in and for the District of Columbia aforesaid agree with the said party of the second part to perform all the stipulations of this contract obligatory in it and to pay or cause to be paid to the said party of the second part or to his heirs, executors, or administrators, in lawful money of the United States, the amount which may be found from time to time due him according to the contract.

Fourteenth. It is further agreed that this contract shall be subject to any and all provisions of an act entitled "An act to provide a government for the District of Columbia," approved February 21, 1871, so far as the same shall or may be in any respect applicable to said contract, and also to any law of the District of Columbia pertinent thereto or to any part thereof as fully as if the same were particularly set forth herein.

In witness whereof the parties to these presents have hereunto set their hands and seals, the day and year first above written.

ALEX. R. SHEPHERD, [L. S.]
JAMES A. MAGRUDER, [L. S.]
ADOLF CLUSS, [L. S.]
H. A. WILLARD, [L. S.]
Board of Public Works of the District of Columbia.

M. J. LAUGHLIN, *Contractor.*

Signed and sealed in presence of—
W. E. NOTT.
J. P. EPPLA.

January 15, 1876, work discontinued under 5th section of contract and in accordance with circular E. O., September 30, 1872. See F. No. 509, E. O., 1876.

Bond $1,000, with securities.

NOTE.—Exhibit B is the same form as Exhibit A except as to date, number, kind, and price of work.

12 IV.—*Traverse of Amended Petition. Filed November* 9, 1881.

And now comes the Attorney General on behalf of the District of Columbia, and, answering the amended petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the said petition be dismissed.

THOMAS SIMONS,
Assistant Attorney General.

13 V.—*Findings of Fact and Conclusion of Law. Filed May* 22, 1882.

This case having been heard before the Court of Claims, the Court, upon the evidence, finds the facts to be as follows:

I.

The claimant had contracts with the board of public works of the District of Columbia, dated August 19 and September 19, 1873, to do certain work and furnish materials in grading streets, &c., in Washington, for said District. For work done and materials furnished under said contracts the Board of Public Works, according to its usage with contractors, caused to be issued and delivered to J. F. Murray, attorney-in-fact of the claimant, from time to time, certificates of accounts, allowed by the auditor of the board, of which the following are copies as they now appear:

[No. 4763.]

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *Dec. 24th*, 1873.

I hereby certify that I have this day audited and allowed the account of M. J. Laughlin, per J. F. Murray, att'y, for work, as per schedule, amounting to fifteen hundred dollars.

$1,500.00.

J. C. LAY, *Auditor.*

(Endorsed:) For value received, the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use. M. J. Laughlin, per J. F. Murray, att'y.

[No. 4764.]

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *Dec. 24th*, 1873.

I hereby certify that I have this day audited and allowed the account of M. J. Laughlin, per J. F. Murray, att'y, for work, as per schedule, amounting to six thousand dollars.

$6,000.00.

J. C. LAY, *Auditor.*

(Endorsed:) For value received, the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use. M. J. Laughlin, per J. F. Murray, att'y.

[No. 4766.]

OFFICE OF AUDITOR, BOARD OF PUBLIC WORKS
WASHINGTON, D. C., *Dec.* 24, 1873.

I hereby certify that I have this day audited and allowed the account of M. J. Laughlin, per J. F. Murray, att'y, for work, as per schedule, amounting to five thousand dollars.

$5,000.00.

J. C. LAY, *Auditor.*

of suits or otherwise, and the said party of the first part may, at its option, retain from the amount or amounts due or to become due under this contract to the said party of the second part a sum or sums necessary or sufficient to satisfy or liquidate all of said demands or claims as aforesaid until they shall be amicably adjusted or finally determined at law.

Twelfth. It is further agreed that the measurements shall be made by the engineer of the said party of the first part or his assistants.

Thirteenth. And the said party constituting and composing the Board of Public Works in and for the District of Columbia aforesaid agree with the said party of the second part to perform all the stipulations of this contract obligatory in it and to pay or cause to be paid to the said party of the second part or to his heirs, executors, or administrators, in lawful money of the United States, the amount which may be found from time to time due him according to the contract.

Fourteenth. It is further agreed that this contract shall be subject to any and all provisions of an act entitled "An act to provide a government for the District of Columbia," approved February 21, 1871, so far as the same shall or may be in any respect applicable to said contract, and also to any law of the District of Columbia pertinent thereto or to any part thereof as fully as if the same were particularly set forth herein.

In witness whereof the parties to these presents have hereunto set their hands and seals, the day and year first above written.

ALEX. R. SHEPHERD, [L. S.]
JAMES A. MAGRUDER, [L. S.]
ADOLF CLUSS, [L. S.]
H. A. WILLARD, [L. S.]
Board of Public Works of the District of Columbia.

M. J. LAUGHLIN, *Contractor.*

Signed and sealed in presence of—
W. E. NOTT.
J. P. EPPLA.

January 15, 1876, work discontinued under 5th section of contract and in accordance with circular E. O., September 30, 1872. See F. No. 509, E. O., 1876.

Bond $1,000, with securities.

NOTE.—Exhibit B is the same form as Exhibit A except as to date, number, kind, and price of work.

12 IV.—*Traverse of Amended Petition. Filed November* 9, 1881.

And now comes the Attorney General on behalf of the District of Columbia, and, answering the amended petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the said petition be dismissed.

THOMAS SIMONS,
Assistant Attorney General.

13 V.—*Findings of Fact and Conclusion of Law. Filed May* 22, 1882.

This case having been heard before the Court of Claims, the Court, upon the evidence, finds the facts to be as follows:

I.

The claimant had contracts with the board of public works of the District of Columbia, dated August 19 and September 19, 1873, to do certain work and furnish materials in grading streets, &c., in Washington, for said District. For work done and materials furnished under said contracts the Board of Public Works, according to its usage with contractors, caused to be issued and delivered to J. F. Murray, attorney-in-fact of the claimant, from time to time, certificates of accounts, allowed by the auditor of the board, of which the following are copies as they now appear:

[No. 4763.]

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *Dec. 24th*, 1873.

I hereby certify that I have this day audited and allowed the account of M. J. Laughlin, per J. F. Murray, att'y, for work, as per schedule, amounting to fifteen hundred dollars.

$1,500.00.

J. C. LAY, *Auditor.*

(Endorsed:) For value received, the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use. M. J. Laughlin, per J. F. Murray, att'y.

[No. 4764.]

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *Dec. 24th*, 1873.

I hereby certify that I have this day audited and allowed the account of M. J. Laughlin, per J. F. Murray, att'y, for work, as per schedule, amounting to six thousand dollars.

$6,000.00.

J. C. LAY, *Auditor.*

(Endorsed:) For value received, the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use. M. J. Laughlin, per J. F. Murray, att'y.

[No. 4766.]

OFFICE OF AUDITOR, BOARD OF PUBLIC WORKS
WASHINGTON, D. C., *Dec.* 24, 1873.

I hereby certify that I have this day audited and allowed the account of M. J. Laughlin, per J. F. Murray, att'y, for work, as per schedule, amounting to five thousand dollars.

$5,000.00.

J. C. LAY, *Auditor.*

(Endorsed:) For value received, the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use. M. J. Laughlin, per J. F. Murray, att'y.

14 [No. 4767.]

OFFICE OF THE AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *Dec. 24th*, 1873.

I hereby certify that I have this day audited and allowed the account of M. J. Laughlin, per J. F. Murray, att'y, for work, as per schedule, amounting to two thousand dollars.

J. C. LAY, *Auditor.*

(Endorsed:) For value received, the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use. M. J. Laughlin, per J. F. Murray, att'y.

And said Board of Public Works issued to the claimant, in like manner for work done by the Evans Concrete Company under its contract, a certificate, of which the following is a copy, as it now appears:

[No. 4426.]

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *December 10th*, 1873.

I hereby certify that I have this day audited and allowed the account of Evans Concrete Co., per M. J. Laughlin, for setting curb on G St., between 18th and 22d streets west, amounting to five hundred and ninety-seven dollars.

$597.00. J. C. LAY, *Auditor.*

(Endorsed in blank:) M. J. Laughlin.

(Upon the face is stamped:) Cancelled by the Board of Public Works.

The indorsement of the name of M. J. Laughlin, per J. F. Murray, attorney, indorsed on the first four of the above certificates, and the name of M. J. Laughlin, indorsed on the last of said certificates, were written thereon by those persons respectively when the certificates were transferred as hereinafter set forth.

The indorsement of transfer on the first four of the above certificates to N. A. Cowdry was printed after the issue of the certificates and after the transfer of the same by the claimant, but before their redemption by the board of audit and without his knowledge.

The cancellation on certificate No. 4426 was stamped thereon when the certificate was redeemed.

II.

The claimant demanded payment of said certificates from the treasurer of the Board of Public Works, but he had no funds for the payment of the same, and did not pay them to the claimant.

III.

The claimant borrowed money on said certificates of one Rudolph Blumenburg at the rate of 33 cents on a dollar of their face value, giving his notes at that rate in the ordinary commercial or mercantile form of notes, to wit: On the 20th of January, 1874, he thus hypothecated certificates Nos. 4764, 4766, and 4767, and on the 14th of February, 1874, he thus hypothecated certificates Nos. 4763 and 4426.

Upon the delivery of said certificates to said Blumenburg, the claimant, by himself or his attorney, indorsed his name on the back thereof, as appears in finding one.

IV.

On or about the 5th of June, 1874, a written document was given to James A. Magruder, treasurer of the Board of Public Works,
15 which he filed with the papers of the board, where it has ever since remained, and of which the following is a copy:

WASHINGTON, D. C., *June 5th*, 1874.

Col. James A. Magruder, Treasurer B. P. W.

SIR: I do most respectfully ask of you not to pay the following auditor's certificates, dated Dec., 1873, issued to "M. J. Laughlin, per J. F. Murray, attorney," viz: No. 4763, for $1,500; No. 4764, for $6,000; No. 4766, for $5,000; No. 4767, for $2,000.

Also a certificate issued in the name of M. J. Laughlin, No. 4426, for $597.

Very respectfully, J. F. MURRAY.

Previous to that date the claimant had orally notified said Magruder not to pay said certificates, but at what exact time does not appear.

The claimant never brought any suit in equity in the supreme court of the District of Columbia, or elsewhere, either to enjoin the conversion of said auditor's certificates or to establish his interest therein or title thereto.

V.

Said certificates were redeemed as follows:

No. 4426, by the treasurer of the Board of Public Works. He omitted to enter the redemption on his books, and the date thereof does not appear; but it was prior to March 30, 1874, after which time he made no payments of any kind. He produced the certificate on the settlement of his accounts as treasurer, and the same was credited and allowed to him. To whom the certificate was paid by the treasurer does not appear, but it was not paid to the claimant.

Nos. 4763, 4764, 4766, and 4767 were presented by N. A. Cowdry July 16, 1874, to the board of audit for allowance under the provisions of the act of June 20, 1874, and the same were audited and certificates of the board of audit were issued in exchange therefor.

The certificates issued by board of audit have been converted into bonds under the act authorizing their issue.

Neither said Blumenburg nor any assignee of his has accounted with the claimant for the proceeds of said certificates transferred to him, nor returned the notes of said claimant for which the certificates were transferred as collateral security.

Conclusion of Law.

Upon the foregoing findings of fact the Court decides as a conclusion of law that the claimant is not entitled to recover, and that his petition must be dismissed.

VI. *Opinion of the Court.*

RICHARDSON, J., delivered the opinion of the Court:

This case differs very little as to the questions of law involved from that of William H. Adams, just decided, and to the opinion of the Court in that case we refer for a fuller exposition of our views upon the principles of law which have been raised than it is necessary now to repeat. The facts concisely stated are these: The claimant had five certificates issued to him by the Board of Public Works for work done for the District under contract, all of which he pledged to one Blumenberg for money borrowed. One of them was redeemed and paid by the treasurer of the board to the bearer, who presented the same with the blank indorsement of the claimant thereon. Payment must have been made before March 30,
16 1874, as the findings show that the treasurer made no payments of any kind after that date. This was before the date of what is now claimed to be a notice to the treasurer not to pay the same, so that this certificate was paid without objection, and the claimant must be held to have assented thereto.

The other four certificates were issued to "M. J. Laughlin, per J. F. Murray, att'y," and were so indorsed in blank by the claimant's attorney when they were pledged to Blumenburg for money borrowed in January and February, 1874. Blumenburg passed them to one Cowdry, who caused to be printed over the blank indorsement a formal assignment to him in these words:

For value received, the within debt is assigned and transferred to N. A. Cowdry, who is authorized to collect the same to his own use.

In this form they were presented to the board of audit July 16, 1874, and were thereafter redeemed in his favor. Certificates were issued to him for the same, and they were paid in bonds, as the act of Congress provided.

That the claimant was bound by the formal assignment written over his name, and that the board of audit was justified in treating with the holder, upon such indorsement, as having title thereto, is well established by numerous judicial decisions, and is recognized by the Supreme Court in Cowdry *vs.* Vandenburg (101 U. S. R., 572), wherein they say: "The complainants could have expressed in their indorsement the purpose of the deposit of the certificate with Blumenburg—that it was a security for a specified sum of money—and

thus imparted to all subsequent purchasers or assignees that the pledger held only a qualified interest in the claim; but, having indorsed their name in blank, they virtually authorized the holder to transfer or dispose of the certificate by writing an absolute assignment over their signature." If the holder could transfer the certificate with such an indorsement he could certainly collect it by a like indorsement, so as to bar all rights of the original payee as against the debtor, who in good faith had made payment thereof.

On the 5th of June, 1874, fifteen days before the board of public works was abolished, by the act of June 20, 1874, ch. 337 (1 supplement to R. S., p. 53), a paper was delivered to the treasurer of the board, by whom it was filed in its archives, and it has ever since been on file there. The following is a copy:

Col. Jas. A. Magruder, Treasurer B. P. W.

SIR: I do most respectfully ask of you not to pay the following auditor's certificates, dated Dec., 1873, issued to M. J. Laughlin, per J. F. Murray, attorney, viz: No. 4763, for $1,500; No. 4764, for $6,000; No. 4766, for $5,000; No. 4767, for $2,000; also a certificate issued in the name of M. J. Laughlin; No. 4426, for $597.

Very respectfully,

J. F. MURRAY.

It is now attempted to be maintained that this was such a notice to the District and to the board of audit of the claimant's alleged title or claim to the certificates that the redemption of them subsequently by the board of audit so put the District in the wrong that it is now bound to pay the same to him.

In this view we cannot concur. It does not appear that the board of audit ever had actual notice of this document, or that the claimant ever made any efforts to bring his demands to the attention of the board. The board of audit was not the successor of the Board of Public Works. It had by law "full access to all the records, books, papers, and vouchers of every kind whatsoever of the
17 Board of Public Works and of the District of Columbia," but it did not have the custody of them. It was not bound to take official notice of every paper deposited among the great mass of archives of the District. At most it was authorized to examine any of them on its own motion or on motion of any party interested.

Nor does it appear that the District Commissioners had any notice of this document, and if they had such notice, actual or constructive, all they could have done was to refer the claimant to the board of audit. But that was not necessary, because the board itself had given public notice under the law to all persons having claims against the District to present them. The claimant's attorney had requested the treasurer of the Board of Public Works not to pay these certificates to anybody, and the treasurer had acceded to his request and had not paid them. This was all that he had requested. If the claimant still set up any right to the certificates after Congress had

established a tribunal to pass upon and allow them, he should have gone before that board and presented his claim. When he found that Blumenburg was running away with his certificates indorsed by him in blank it was not sufficient for the claimant, in order to stop payment of them, to give notice to the first board to which they might be presented for payment and then let the matter drop. It was for him to follow up, assert, and prove his claim to the certificates before the board of audit, to which he knew they might be presented for redemption. This he did not do; but, on the contrary, he permitted the board to redeem them without objection from him. He stood by and did not speak, when it was his duty to speak, and he must abide by the result to which his silence contributed.

Like the claimant in the Adams case, the present claimant put his confidence in Blumenburg, intrusted him with power over his certificates by blank indorsements on the back of them, and borrowed money upon them. Blumenburg, it is alleged, abused his confidence, betrayed the trust, received payment of the certificates by his assignee, and has not accounted and settled with the claimant.

The remedy for the claimant, if he has any, is against Blumenburg and not against the District. The petition must be dismissed.

NOTT, J., was not present when this case was argued and took no part in the decision.

18 VII. *Final Judgment of the Court.*

At a Court of Claims held in the city of Washington on the 22nd day of May, A. D. 1882, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the defendant, and do order, adjudge, and decree that the petition of the claimant, Matthew J. Laughlin, be dismissed.

VIII. *Application for and Allowance of Appeal.*

To the honorable judges of the Court of Claims:

Comes the claimant by his attorney, and from the judgment rendered in the above-entitled cause on the 22nd day of May, 1882, in favor of the defendant, the claimant, by his attorney, N. B. Edwards, on the 20th day of July, 1882, makes application for and gives notice of an appeal to the Supreme Court of the United States.

N. B. EDWARDS,
Attorney for Claimant.

Filed July 20, 1882.

At Chambers.

Allowed.

C. D. DRAKE,
Chief Justice.

19 In the Court of Claims.

MATTHEW J. LAUGHLIN
versus
THE DISTRICT OF COLUMBIA. } No. 31.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application for the allowance of an appeal to the Supreme Court of the United States, and of the allowance of same by Chief Justice Drake.

Seal Court of Claims. Reipublicæ Civibusque.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims at Washington city, this 13th day of October, A. D. 1882.

JOHN RANDOLPH,
Ass't Clerk of the Court of Claims.

Endorsed on cover: Court of Claims. No. 111. Matthew J. Laughlin, appellant, *vs.* The District of Columbia. Filed 14th October, 1882.

116-485

FILED
NOV 24 1885
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM 1885.

MATHEW J. LAUGHLIN, *appellant*,
vs.
THE DISTRICT OF COLUMBIA. } No. 111.

APPEAL FROM COURT OF CLAIMS.

STATEMENT OF THE CASE.

This suit was brought in the Court of Claims, July 28, 1880, in accordance with the Act of Congress, approved June 16, 1880, (21 Statute, 284), to recover from the defendant the value, with interest, of the non-negotiable certificates set forth on pages 1 and 2 of the record, which had been wrongfully redeemed or cancelled by the Board of Audit, and belonging to appellant amounting to $15,097.00, and which certificates the appellant had hypothecated to one Bloomenberg as collateral security for the payment of appellant's note, amounting to $5,032.33.

The claimant proved that he notified the defendant of his ownesrhip of the said certificates, and the notice is printed in the record, page 4, and said notice has remained among the archives of the District of Columbia ever since. Yet the defendant, afterwards, did wrongfully pay the amount of said certificates to others, and now holds the same, and although often requested, refused to pay the same, or any part thereof to claimant.

ASSIGNMENT OF ERRORS.

The Court of Claims erred:

First. In holding that the notice given by appellant (p. 4) to the Treasurer of the Board of Public Works, was no notice to the Board of Audit, and District of Columbia.

Second. In holding that the appellant should have gone before the Board of Audit and presented his claim.

Third. In holding that appellant was guilty of laches in not filing his claim before the Board of Audit.

Fourth. In holding that the District of Columbia was not liable, with notice not to pay the certificates in controversy in this suit.

ARGUMENT

First. It is contended that the Board of Audit by the statute of June 20, 1874, (18 Statute, 118), was to assume the funtions of the Board of Public Works, it examined all claims, debts, dues, demands, due by the District of Columbia, and all books papers, etc., were turned over to the Board of Audit, and it was bound to take notice of all papers, books, etc., filed in said office of the late Board of Public Works, and, therefore, notice of the Board of Audit.

Second. Act of June 16, 1880, giving the Court of Claims jurisdiction of this claim did not require that the appellant should have gone before the Board of Audit. It expressly prohibited the court from taking jurisdiction, if he had gone, and his claim had been rejected, besides the act creating the Board of Audit, did not bar any claim that was not presented to the Board of Audit.

Third. So long as appellant filed his suit within the limitation of the Act of June 16, 1880, he could not in the eyes of the law be held guilty of any laches, in not having presented his claim before the Board of Audit.

Fourth. A holder of negotiable paper purchased before its maturity, is protected only to the amount paid before notice.

93 U. S., 92. 102 U. S., 545.
102 U. S., 442. 101 U. S., 575.

The purchaser of a *non*-negotiable paper, OVER DUE, or a mere chose-in-action, with notice, is not protected against any equities.

These certificates, as the record shows, were not paid, but were redeemed or cancelled by the exchange of bonds for them, and this would not make the defendant a purchaser for value.

93 U. S., 94. 49 N. Y., 286, Jones on pledges, § 470.

And, at the most, the defendant could only claim the rights that Bloomenberg had.

55 Barber, 59. 93 U. S,, 324. 24 Indiana, 62.

The redemption or exchange of the certificates by the District was after the notice was given. The notice is dated June 5, 1874, (p. 41), and the certificates delivered and receipted for by other parties, July 16, 1874. And the redemption and exchange of the certificates were made, with full knowledge of all the facts that they had been hypothecated, and the holder only had a lien on them for the amount borrowed.

EPPA HUNTON,
V. B. EDWARDS,
Attys, for Appellant.

116-485

Office Supreme Court U. S.
FILED.
DEC 31 1885
JAMES H. McKENNEY.
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

MATTHEW J. LAUGHLIN, APPELLANT,
vs.
THE DISTRICT OF COLUMBIA.
} No. 111.

BRIEF FOR THE DEFENDANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

MATTHEW J. LAUGHLIN, APPELLANT,
vs.
THE DISTRICT OF COLUMBIA. } No. 111.

BRIEF FOR THE DEFENDANT.

This is an appeal from the judgment rendered by the Court of Claims. It appears by the facts found that the claimant had contracts with the Board of Public Works of the District of Columbia, dated August 19 and September 19, 1873, to do certain work and furnish materials in grading streets, &c., in the city of Washington. For work done and materials furnished under such contracts the Board of Public Works, according to its usage with contractors, caused to be issued and delivered to J. F. Murray, attorney in fact of the claimant, from time to time, the certificates of indebtedness set out in the record, pages 9 and 10, and numbered, respectively, 4763, 4764, 4766, 4767, and 4426. Upon the facts, as found, we submit that the judgment of the Court of Claims was plainly right, and that the claimant was not entitled to

recover. The nature and history of these and other certificates of indebtedness have been frequently considered by the Court of Claims (*Fendall* vs. *District of Columbia*, 16 C. Cls., 106; *Adams* vs. *Same*, 17 C. Cls., 351; *Morgan* vs. *Same*, 19 C. Cls., 156; *Looney* vs. *Same*, 19 C. Cls., 230).

The decision of that court upon the questions involved in this suit have all been sustained by this court (Looney *vs.* District of Columbia, 113 U. S., 258). It will be seen that the decision in that case governs this case. Mr. Justice Gray, in delivering the opinion, announces a doctrine which is strictly applicable here. After stating that the Auditor's certificates were not negotiable but were merely evidence of the debt of the District to the claimant under its contract with him, he says:

> If he had kept the Auditor's certificates he could doubtless have recovered against the District the full amount of the debt, of which they were the evidence. But the facts found show that he has so dealt with these certificates as to prevent him from maintaining this suit. The amount of some of the certificates he has been paid by the District in money. Others of the certificates he has sold and assigned for value and thereby transferred the equitable title in them to the assignee and authorized him to receive payment of their amount from the District; and the payment of that amount in full by the District to the assignee is a discharge of so much of its debt to the claimant (Cowdry *vs.* Vandenburgh, 101 U. S., 572; Foss *vs.* Lowell Savings Bank, 111 Mass., 285). The remaining certificates he has exchanged with the District for an equal amount of its negotiable securities, payable on time with interest, and he has since sold those certificates for their value in the market. The District

is liable to the purchaser either upon those securities themselves or upon the other bonds since taken by him instead of some of them, and cannot be also held liable to the original creditor for the same amount or any part thereof.

In the case of Cowdrey *vs.* Vandenburgh, 101 U. S., 572 (referred to above), Mr. Justice Field, speaking for the court, says:

> The principle is well settled that when the owner of property in any form clothes another with the apparent title or power of disposition, and third parties are thereby induced to deal with him, they shall be protected. The case of McNeil *vs.* Tenth National Bank, in the court of appeals of New York, contains a clear statement of the law on this head. There, it is true, a certificate of stock was pledged, with a blank assignment and power of attorney indorsed, which the pledgee afterwards filled up and then disposed of the stock. It was evident that the owner contemplated that the blanks in the assignment and power should be filled up, if it became necessary (46 N. Y., 325). But the principle stated by the court is as applicable where no such intention is manifest. The right of innocent third parties, as the court there observes, "do not depend on the actual title or authority of the party with whom they deal directly, but are derived from the act of the real owner, which precludes him from disputing, as against them, the existence of the title or power which, through negligence or mistaken confidence, he caused or allowed to appear to be vested in the party making the conveyance." Here the complainants could have expressed in their indorsement the purpose of the deposit of the certificate with Blumenburgh—that it was a security for a specified sum of money—and thus imparted notice to all sub-

> sequent purchasers or assignees that the pledgee held only a qualified interest in the claim. But having indorsed their name in blank, they virtually authorized the holder to transfer or dispose of the certificate by writing an absolute assignment over their signature.

In the case now under consideration, we insist that the claimant was bound by the formal assignment written over his name which had been indorsed in blank; and that the Board of Audit was well justified in dealing with the holder upon such indorsement as having title to the certificates. The certificates in question were mere acknowledgments of indebtedness and were assignable so as to transfer all the property of the payee therein to the assignee who might have brought his action at law to his own use in the name of the payee, or might have maintained a bill in equity thereon in his own name. The claimant having indorsed the certificates in blank, and pledged them for borrowed money, and the District having paid them without any notice of any equities of the payee, cannot now be held to pay them again, although the pledgee may have fraudulently, as against the assignor, transferred them to another. As was well said by Judge Richardson, of the Court of Claims, in Adams *vs.* The United States, 17 C. Cls., 364:

> When one sets afloat upon the business community a chose in action payable to him with his signature in blank on the back of it as though he had parted with his interest therein, and thus gives implied authority to the holder to fill up a transfer, he cannot complain if it drifts beyond his reach and out of his power to recall. He must take the consequences of his own act. He puts his rights in the control of

the bearer of the chose in action and he must look to the persons with whom he deals for a misuse of the trust, if any, which he has conferred upon them. Innocent parties purchasing for full value, or the debtor paying in the ordinary course of business to the holder, in such case are not to be charged with a secret trust which the original creditor did not disclose before such purchase or payment.

But the appellant claims that he notified the defendant of his ownership of said certificates and that the defendant afterwards did wrongfully pay the amount of said certificates to others.

Is this allegation true? There is nothing in the record to sustain it. It appears that on the 5th of June, 1874, fifteen days before the Board of Public Works was abolished by the act of June 20, 1874, a paper was delivered to the treasurer of the Board, by whom it was filed in its archives, and it has ever since been on file there. The following is a copy:

WASHINGTON, D. C., *June* 5, 1874.

Col. JAMES A. MAGRUDER,
Treasurer B. P. W.:

SIR: I do most respectfully ask of you not to pay the following auditor's certificates, dated December, 1873, issued to M. J. Laughlin, per J. F. Murray, attorney, namely: 4763 for $1,500, 4764 for $6,000, 4766 for $5,000, 4767 for $2,000. Also a certificate issued in the name of M. J. Laughlin, 4426 for $597.

Very respectfully,

J. F. MURRAY.

We deny that this paper was such a notice to the District and to the Board of Audit as to put the District in

the wrong when the Board of Audit subsequently redeemed the certificates.

This brings us to a consideration of the powers and duties of the Board of Audit, its relations to the District, and how far the latter, as a *quasi* corporation, was bound to take notice of the claimant's controversies with parties to whom he had assigned his certificates.

The first section of the act of June 20, 1874 (18 Stats., 116), entitled "An act for the government of the District of Columbia and for other purposes," enacts—

> That all provisions of law providing for an executive, for a secretary for the District, for a legislative assembly, for a Board of Public Works, and for a Delegate in Congress in the District of Columbia are hereby repealed.

Section 6 provides that—

> It shall be the duty of the First Comptroller of the Treasury and of the Second Comptroller of the Treasury of the United States, who are hereby constituted a Board of Audit, to examine and audit for settlement all the unfunded or floating debt of the District of Columbia and of the Board of Public Works, hereinafter specified, namely: First, the debt evidenced by sewer certificates; secondly, the debt purporting to be evidenced and ascertained by certificates of the Auditor of the Board of Public Works; * * * and shall have full access to all of the records, books, papers, and vouchers of every kind whatsoever of the Board of Public Works and of the District of Columbia. * * * Said Board of Audit shall give notice for the presentation of the claims hereinbefore specified in such manner as may be deemed necessary, and no claim shall be audited or allowed unless presented within ninety days after

> the first publication of such notice; and said Board shall make full report of all their acts and proceedings to the President, to be by him transmitted to Congress on the first day of the next session thereof.

It thus appears that while the Board of Audit had full access to all the records, &c., of the Board of Public Works and of the District of Columbia, it did not have the custody of them, and was in no sense the successor of the Board of Public Works. While it was permitted to examine any paper on file in the archives of the District, it was not required to take official notice of it. The law required the Board of Audit to give notice for the presentation of claims, and that no claims should be audited or allowed unless presented within ninety days after the first publication of such notice. Yet it does not appear that the Board of Audit have had notice of this claim, or that the claimant made any effort to bring it to their attention. Nor does it appear that the District Commissioners had notice of it. It seems that the claimant contented himself simply with making a request through his attorney to the treasurer of the Board of Public Works not to pay the certificates to any one. The treasurer complied with that request and did not pay them. Clearly it was the duty of the claimant to observe the law of Congress and to present his claim to the tribunal which had been appointed to pass upon it. This he has failed to do, although he knew that it was his right and duty to do so. He has stood by and permitted the Board of Audit to redeem the certificates without objection. He remained silent when it was his duty to speak, and now cannot be heard to speak when it is his duty to be silent.

The defendant, having paid the certificates once, cannot be required, either in law or equity, to pay them again unless it can be shown that the payment was made wrongfully and without authority. When a person has not actual notice, he ought not to be treated as if he had notice, unless the circumstances are such as enable the court to say not only that he might have acquired, but also that he ought to have acquired, it but for his gross negligence in the conduct of the business in question (Wilson *vs.* Wallace, 6 Wall., 83).

The opinion of the Court of Claims in Adams's case, already referred to, has such a direct bearing on this case that we beg leave to invite the special attention of the court to it, and we will conclude this brief with the following quotation:

> The Board of Audit was a peculiar body, *sui generis*. While it was not a court nor exactly a board of arbitration, and had not the corporate powers and duties of the District, and was not the successor of the Board of Public Works, nor of any other branch of the former government of the District, yet it was clothed with great powers to examine and audit claims against the District, to issue for such as it allowed certificates which were to be redeemed by the sinking-fund commissioners in bonds, and the District officers had no control over it, and were powerless to defend the District against its acts. The circumstances under which this Board was created are well known. The District had become involved in immense indebtedness for the great works undertaken with a view to the improvement of the capital of the nation on a grand scale far beyond the appropriations made therefor. The treasury of the District was without funds to meet the demands upon it, payment had

stopped, and District securities were discredited in the market, and were sold or hypothecated with difficulty and at ruinous discounts.

At this juncture Congress, with its almost absolute power over this District, unrestrained by any local constitution, as are the State legislatures within their jurisdiction, and very little by the Federal Constitution, came in and abolished the Board of Public Works and all other branches of the government. It placed the corporate powers in Commissioners, and established the Board of Audit for a limited period, to examine and allow all claims against the District which should be presented and proved, and whose certificates of allowance were to be redeemed and paid in bonds of the District to be issued by a board of sinking-fund commissioners. It was entirely an independent body. The District as a corporation, by its Commissioners, had no control over the Board, could not prevent its auditing, settling, and redeeming any claims which might be presented, and could not itself pay any.

The Board of Audit gave public notice to creditors of the District to present their claims, and ninety days were allowed by law for that purpose, and that time was further extended.

Of all this the claimant had actual or constructive notice. He had been a contractor with the Board of Public Works and had taken its certificates of indebtedness to the extent of nearly $600,000, and he was bound to know the measure of relief which Congress, by a public act, had presented to the creditors of the District. He knew that the certificates which he had indorsed in blank were outstanding and might be presented to this Board for redemption. It was his duty to see to it that the Board of Audit was put in possession of the facts upon which he relied as an

objection to the redemption of the certificates in favor of the bearer, who he knew had *prima facie* title to them. But he never gave the Board any notice whatever that he claimed them, or that he objected to the payment of them to Blumenburg or his assignees, so far as the findings show.

The paper, now alleged by him to be notice, which he left with Magruder, was not addressed to anybody, was not filed with the District archives, and never came to the possession of the Board. Neither the District Commissioners nor any other officers of the District are shown to have had any notice of it, except Magruder, who had ceased to be treasurer of the Board of Public Works, and the Board itself had been abolished.

It was the duty of the claimant to assert and prove his title to the certificates to the Board of Audit when or before they were presented for redemption.

The findings show that it does not appear whether or not he went before the Board and presented his claims to the certificates or not. If he did present them, they were rejected by the Board by payment to other parties, and so we have no jurisdiction of the matter, since Congress has provided that this court shall have no jurisdiction to consider claims rejected by the Board of Audit. If he did not appear and object to the payment of the certificates to other parties, when he might and ought to have done so, he is guilty of laches, and must be held to have allowed their payment in that manner without objection. In either case he has no cause of action.

On the whole the claimant's case is really this and nothing more. He put his confidence in Blumenburg, intrusted him with power over his certificates by blank indorsements on the back of them, and borrowed money upon them. Blumenburg, it is alleged, abused his confidence, betrayed his trust,

received payment of the certificates by himself or his assignees, and has not accounted and settled with the claimant. To him this was a great misfortune, but we can see no ground, in law or equity, why the District of Columbia should indemnify him for losses which thus came upon him through his own misplaced confidence in another.

Very respectfully,

JOHN GOODE,
Solicitor-General.

O

116-483

SUPREME COURT U. S.
FILED
JAN 7 1886
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

No. 111. October Term, 1885.

MATTHEW J. LAUGHLIN, *Appellant*,

vs.

THE DISTRICT OF COLUMBIA.

Additional Brief for Appellant.

ENOCH TOTTEN,
For Appellant.

R. O. POLKINHORN & SON, PRINTERS,

Supreme Court of the United States.

No. 111. October Term, 1885.

MATTHEW J. LAUGHLIN, *Appellant*,
vs.
THE DISTRICT OF COLUMBIA.

Additional Brief for Appellant.

STATEMENT OF THE CASE.

The appellant, by virtue of certain contracts with the Board of Public Works of the District of Columbia, dated in August and September, 1873, performed labor and furnished materials upon the public streets of this city, and the Board of Public Works, according to its custom, issued and delivered from time to time, to J. F. Murray, the attorney in fact of the appellant, certificates for work done, as allowed by the Auditor of the Board. These certificates are usually denominated "Auditor's Certificates," and the copies of the five certificates in controversy will be found on pages nine and ten of the record.

In January and February, 1874, the appellant, on the security of these certificates and his promissory note, borrowed about $5,000.00 from one Blumenburg, the sum so

borrowed being thirty three per centum of the amount called for by the certificates. At the time of borrowing the money he delivered his note therefor together with the certificates to Blumenburg; the certificates were endorsed in blank. Afterwards and prior to the redemption of four of the certificates by the District of Columbia, as hereinafter stated, a formal assignment to N. A. Cowdry was printed over the blank endorsement before mentioned, but without the knowledge of the appellant.

Prior to June 5th, 1874, the appellant orally notified James A. Magruder, a member and treasurer of the Board of Public Works, that he should not pay said certificates, and on that day (June 5th), the appellant caused to be served upon said Magruder, a notice in writing addressed to him as treasurer of the Board of Public Works, warning him not to pay any of said certificates, which certificates are fully described in the body of said notice. This notice was given to Mr. Magruder, who filed it with the papers of the board, where it has ever since remained (11.)

Notwithstanding this notice the four certificates issued to Murray, amounting to $14,500.00, were taken up by the "Board of Audit," established by the act of June 20, 1874, on presentation by one N. A. Cowdry, July 16, 1874, and "Board of Audit" certificates were issued in exchange therefor. The small certificate for $597.00 was redeemed prior to March 30, 1874. These "Board of Audit" certificates have been converted into bonds under the provisions of the said act of Congress of June 20, 1874, but neither Blumenburg nor any other person has ever accounted to the appellant for them, and the difference between the amount of his promissory note delivered to Blumenburg and the value of the bonds received by Cowdry, is still due to the appellant. On this state of facts the Court of Claims held that the appellant was not entitled to recover and dis-

missed his petition. From that judgment this appeal was taken.

Assignment of Errors.

The Court of Claims decided substantially:

1. That the Board of Audit was an independent tribunal distinct from the defendant corporation, and that the notice to the defendant corporation was not a notice to this board of which it was bound to take notice:

2. That the formal assignment now found printed on the certificates over the blank endorsement, conveyed an absolute title in the certificates to the assignee, which the Board of Audit was bound to recognize.

It is submitted to the Court that the above propositions of law, as asserted by the Court of Claims, cannot be maintained.

Points and Authorities.

I.

In the first place, the Board of Public Works was organized under an Act of Congress approved February 21, 1871, entitled, an "An act to provide a Government of the District of Columbia." (16 Stat., 419.) This statute created a municipal corporation which included the entire territory of the District of Columbia. The Board of Public Works was invested with the exclusive control of the public streets of the city of Washington, and continued to exercise its functions as a component part of the municipality until 1874, when the Act of Congress entitled, "an Act for the Government of the District of Columbia, and for other purposes," became a law. (18 Stat., 116.) This statute materially changed the charter of the municipal corporation

created under the provisions of the statute first named, and also changed the instrumentalities for carrying it on. It wholly abolished the offices of Governor and Delegate in Congress, as well as the Legislative Assembly and the Board of Public Works. It is provided that the powers and duties of the Governor and Board of Public Works should be under certain limitations, vested in a commission of three persons to be appointed in the usual manner. This commission was authorized to—

> "Exercise all the power and authority now lawfully vested in the Governor or Board of Public Works of said District, except as hereinafter limited; and shall be subject to all the restrictions and limitations now imposed by law on said Governor or Board; and shall have power to apply the taxes, or other revenues of said District, to the payment of the current expenses thereof, to the support of the public schools, the fire department, and the police, and to the payment of the debts of said District secured by a pledge of the securities of said District or Board of Public Works as collateral, and also to the payment of debts due to laborers and employees of the District and Board of Public Works; and for that purpose shall take possession and supervision of all the offices, books, papers, records, monies, credits, securities, assets, and accounts belonging or appertaining to the business or interests of the Government of the District of Columbia and the Board of Public Works, and exercise the power and authority aforesaid." (18 Stat., 116.)

The Court of Claims, in the opinion in this case, when discussing the powers and duties of the "Board of Audit," refers to what was said by it in the opinion in a previous case, (*Adams* vs. *District of Columbia*, 17 C. C., 365.) It there declares, as to this Board, that "while it was not a Court, nor exactly a Board of Arbitration and had not the corporate powers and duties of the District, nor of any other branch of the former government of the District, yet it was

clothed with great powers to examine and audit claims * * * * and the District officers had no control over it, and were powerless to defend the District against its acts." (17 C. C., 364.) In that case it says, further, on the same subject, that it "was an entirely *independent* body. The District, as a corporation, by its Commissioners, had no control over the Board, could not prevent its auditing, settling and redeeming any claim which might be presented, and could not itself pay any."

And in this case the Court says:

> "If the claimant still set up any right to the certificate after Congress had established a *tribunal* to pass upon and allow them, he should have gone before that Board and presented his claim."

A reference to the provisions of the act of June 20, 1874, will enable us to determine the relative duties of this board, when considered in reference to the municipality or corporation called the "District of Columbia."

That statute, after abolishing the Board of Public Works and other branches of the old corporation, proceeds to provide for the appointment of Commissioners, and then defines their duties, as before set out. By the sixth section of that act, the Board of Audit in question is created, and its powers and duties clearly defined, as follows:

> "It shall be the duty of the First Comptroller of the Treasury and the Second Comptroller of the Treasury of the United States, who are hereby constituted a Board of Audit, *to examine and audit for settlement* all the unfunded or floating debt of the District of Columbia and of the Board of Public Works, hereinafter specified, namely: First the debt evidenced by sewer certificates; secondly, *the debt purporting to be evidenced and ascertained by certificates of the Auditor*

> *of the Board of Public Works*; thirdly, the debt evidenced by the certificates of the Auditor and the Comptroller of the District of Columbia. * * * * It shall further be the duty of said Board of Audit to examine into and audit all of the accounts of the Auditor and of the Treasurer of the Board of Public Works, and of the Auditor, Treasurer, the Collector, and the Comptroller of the District of Columbia, from the date of the organization of said board and of the present government of said District, and for the purposes hereinbefore specified, shall have the power to subpœna witnesses, administer oaths, and examine witnesses under oath, and shall have full access to all of the records, books, papers and vouchers of every kind whatsoever of the Board of Public Works and of the District of Columbia; *and to the end that said books and accounts may be thoroughly examined*, and that the indebtedness of said District, and of the Board of Public Works, and the state of the books and accounts of each of the officers aforesaid, may be accurately ascertained, shall employ one or more skillful and impartial accountants non-resident of the District of Columbia, and such other assistants as they may deem necessary, *to make examination of said books, vouchers and papers*, and discharge their other duties under this act, and shall procure inspection of such bank books and papers as may be necessary; and they are hereby authorized to allow for the services of such accountant or accountants and assistants such sums as they may deem proper, which shall be paid by the Board of Commissioners out of the revenues of said District. (18 Stat., 118, 119.)

It may be safely asserted that the Board of Audit was not an *independent* body. It was a mere corporate instrument appointed by the Congress, to perform certain functions which appertained exclusively to the business of the corporation, and which were necessary to enable the legislative power to provide for the payment of the debts of the corporation. The wrong complained of here was done by this Board while in the legitimate exercise of a power

and in the discharge of a duty of a corporate nature, which devolved on it by law and therefore it was a servant of the corporation. (2 Dill on Mu. Corps, 977, § 974.)

It is useful, in this argument, to keep in mind all the time, the object which the legislature had in view in making the enactment, *i. e.*, to cure an existing wrong. The corporation was staggering under an unascertained and ponderous debt, made up of just such debts as was due to the appellant. The object of Congress was to stop the expenditure and to provide for the payment of the debts. It was important that this work should be accomplished as speedily as possible. The new officers composing the Commissioners, would naturally be supposed to have work enough to do, without attending to the settlement of these complicated accounts, and hence the Board of Audit, as an auxiliary instrument was provided. But the object, all the time, was to ascertain and describe the debt; the corporation owed the debt, and the corporation was to pay it. The Board of Audit cannot therefore be said, on any reasonable view of the circumstances, to have been more than accountants of the municipal corporation appointed by law to aid in accomplishing the desired end. By no act or omission of this Board could the rights of the creditors of the District be modified or destroyed.

This Court said, in the case of *Cluss* vs. *District of Columbia* (103 U. S., 705), in relation to this Board of Audit:

> "The disallowance of the claim by the Board of Audit, if such had been allowed to be proved, would not have concluded the plaintiff. That Board was not a judicial body, whose action was final; it exercised little more than the functions of an accountant. A claim allowed by it. was not necessarily a valid one; a claim disallowed was not therefore illegal. Its action, either way, left the matter open to contestation in the Courts."

It is well established by the decisions of this Court that a change in the charter of a municipal corporation, in whole or in part by an amendment of its provisions, or by the substitution of a new charter in place of the old one, will not be denied, in the absence of express legislative declarations otherwise, to affect the identity of the corporation, or to relieve it from its previous liabilities, although different powers are possessed under the amended or new charter and different officers administer its affairs.

Boughton vs. *Pensacola*, 93 U. S., 266;
Cluss vs. *District of Columbia*, 103 U. S., 705;
Hemingway vs. *Stonsell*, 106 U. S., 399;
Evanston vs. *Gunn*, 99 U. S., 660;

The Court of Claims declares that the Board of Audit was not the "*successor* of the Board of Public Works." Why not? It is true that it did not succeed to all of its powers and duties; but it is also true that nearly all the powers and duties it did have were previously a part of the powers and duties exercised by the Board of Public Works. It cannot be said that the Board of Public Works, had it continued to exist, would not have been bound to settle these identical accounts out of which this controversy grew. These officers who composed this Board were paid for their services out of the funds of the corporation. (18 Stat., 120.)

The argument, that the corporation had no authority or control over them cannot weigh in favor of the judgment below. They were all subservient to one master—Congress. The Board of Public Works had no master or superior during its existence, except Congress. This Board of Audit, as this Court has declared, was little more than an "accountant." They could only "examine and audit for settlement" such claims as were specified. The actual settlement was made elsewhere, and by other officers. This Court, in the case of *Barnes* vs. *District of Columbia* (91 U. S.,

545), which seems to govern the present case, used the following language:

> "A corporation can act only by its agents or servants. This obvious truth does not imply that the acts must be done by inferior or subordinate agents, but, on the contrary, the higher the authority of the agent, the more evident is the responsibility of the principal. * * * * A municipal corporation may act through its mayor, through its common council, or its legislative department by whatever name called, its Superintendent, Commissioner of Highways, or Board of Public Works, provided the act is within the provision committed to its charge. Nor can it in principle be of the slightest consequence by which means these several officers are placed in their position—whether they are elected by the people of the municipality, or appointed by the President or a Governor. The people are the recognized source of all authority, State and municipal; and to this authority it must come at last, whether immediately or by a circuitous process."

If the Commissioners, provided for by the statute, had been authorized to employ the "one or more skillful and impartial accountants," provided for, with the assistants, and had been required to examine these books, vouches and accounts, and make these settlements, and in the discharge of this duty had overlooked this protest, made by the appellant and filed with the books, papers and vouches, by Magruder, it would hardly be argued that the corporation would not be bound by the notice. Does the fact that Congress deemed it best to have this work done by other officers, place the corporation in a different attitude, or alter its responsibility?

If Magruder, the custodian, under the original corporation, of these books, papers and vouchers, did not do his whole duty when he filed the document with these books and papers, his omissions or neglect cannot affect the rights of

the appellant. Whatever notice was conveyed to Magruder was conveyed to his principle, the corporation. It may be that he, in addition to filing the paper, should have made some note or entry upon the books of the corporation, in such a manner as to arrest the attention of his successors, but a failure of that character on his part, cannot change the position or rights of a creditor.

Bridgford vs. *Tuscumbia*, 4 Word., 611;
16 Fed., R. 910; 6 Barb., 516;
Bigelow vs. *Perth Amboy*, 1 Dutch, 297;
San Antonia vs. *Lewis*, 6 Texas, 69.

One notice to a corporation is sufficient, and a subsequent change of officers furnished no defense against such a wrong as this. And this is true whether the notice was communicated orally or in writing. It is the duty of the outgoing officer to see to it that his successor is made acquainted with any unusual circumstances connected with any particular case, or any particular property. In the case of the *Mechanics Bank of Alexandria* vs. *Seton* (1 Peters, 299), which was a controversy as to the transfer of certain stock of the bank which stood in the name of one Lynn, but was in fact held by him as trustee, this Court declared the law to be that:—

> "Notice to the board of directors, when this stock was transferred to Lynn, that he held it as trustee only, was notice to the bank, and no subsequent change of directors could require a new notice of this fact. So that, if the bank had sustained any injury by reason of a subsequent board, not knowing that Lynn held the stock in trust it would result from the negligence of its own agents, and could not be visited upon the complainants."

The case of *The People ex rel Dannat* vs. *Comptroller*, (77 N. Y., 45), is a well considered case, and is authority for

the appellant both as to the question of notice and the effect of the change of officers. That was an application for a mandamus to compel the Comptroller of the City of New York to pay the amount of a certain order given to the relator, who had a valid claim against one Dutch, a contractor to build a school house in the City of New York. He procured an order from Dutch on the board of education for the amount due him, which order he delivered to that board. When the money became due to Dutch, out of which the order should have been paid, the board prepared a proper voucher therefor, attached the order thereto and transmitted them to the Comptroller of the City. But the Comptroller ignored the order and paid the whole of the money to Dutch. After much litigation the relator applied for a mandamus on the then comptroller, who was the successor of the officer who had ignored the order. The court held that the city was liable, and that the office of Comptroller was a continuous office, and allowed the writ. The defense was that the order was not accepted by the city or by any one for it; that no agent had agreed to pay it; that the change in the incumbent of the office would prevent the interposition by mandamus, and that there being no fund out of which the claim could be paid, the officer could not be required to pay it by the court.

The Court of Claims asserts in this case (13) that:

> "The Board of Audit was not the successor of the Board of Public Works. It had by law full access to all the records, books, papers and vouchers of every kind whatsoever of the Board of Public Works and of the District of Columbia; *but it did not have the custody of them.* It was not bound to take official notice of every paper deposited among the great mass of archives of the District."

An examination of the statute on this subject will demonstrate the incorrectness of this argument. It, of course, is true, that by the terms of the statute (18 Stat., 116) the Commissioners of the District were invested with the custody of all the books and papers, as well as of all the other property of the corporation. But this fact cannot be material in determining the question in hand. The statute clearly makes it the duty of this Board of Audit to fully and carefully examine all the books and papers which necessarily included an examination of the protest filed by the appellant. By the term of the law the board was required "to examine and audit for settlement all the unfunded or floating debt of the District of Columbia and of the Board of Public Works," as thereinafter specified. And among these debts to be so audited is mentioned "the debt *purporting* to be evidenced and ascertained by the certificates of the Auditor of the Board of Public Works." It is further declared to be the duty of this board "*to examine* into and audit *all of the accounts of the Auditor* and of the *Treasurer* of the Board of Public Works." To enable the board to accomplish the object for which it was created, it was empowered to administer oaths, examine witnesses under oath, and it was given full access to all books, papers and vouchers belonging to the corporation. But in order that the books, papers and vouchers might be "thoroughly examined" the board was required to employ a skillful accountant with such assistants as they might deem necessary "to make examination of said books, vouchers and papers." It should seem that a very slight examination would have discovered this protest filed by the appellant.

The Court of Claims, as a further argument in favor of dismissing the petition of the appellant, says: (13.)

> "If the claimant still set up any right to the certificates after Congress had established a tribunal to pass upon and allow them, he should have gone before that board and presented his claim. * * * * * This he did not do; but, on the contrary, he permitted the board to redeem them without objection from him. He stood by and did not speak, when it was his duty to speak, and he must abide by the result to which his silence contributed."

Or, in other words, he is to be held estopped from appealing to a judicial tribunal especially authorized to hear and determine his case, because he chose to rely upon his notice to the defendant corporation, and on his belief that his interests and rights would not be recklessly sacrificed. But this Court has said, as before stated, that this board "was not a judicial body, and * * * * * a claim allowed by it was not necessarily a valid one; a claim disallowed was not, therefore, illegal. Its action either way left the matter open to contestation in the courts."

He had a right to a judicial hearing, and he was not obliged to go before that board; it was the plain duty of the defendant corporation and its officers, including the Board of Audit, to refuse to make any settlement with the holders of these certificates in the presence of this notice. The law-making power appears to have regarded such cases as fit subjects of judicial inquiry; and, therefore, an act of Congress was passed giving the Court of Claims special jurisdiction thereof. The ordinary courts of law in the District were without power to relieve the appellant because of the lapse of time, and for that reason, it is supposed, the special jurisdiction was conferred upon the Court of Claims.

The Act of Congress of June 16, 1880, which clothed the Court of Claims with jurisdiction of this class of cases, provides—

"That the jurisdiction of the Court of Claims is hereby extended to, and it shall have original, legal and equitable jurisdiction of—

"All claims now existing against the District of Columbia arising out of contracts made by the late Board of Public Works:

* * * * * *

"And all certificates of the Auditor of said Board of Public Works."

But this statute contains a limitation in the following words:

"No claim shall be presented to nor considered by the Court of Claims which was rejected by the Board of Audit."

II.

In the second place the Court of Claims apparently relying upon what this Court said in *Cowdry* vs. *Vandenburg*, (101 U. S., 572), declares that—

"That the claimant was bound by the formal assignment written over his name, and that the Board of Audit was justified in treating with the holder, upon such endorsement, as having title thereto is well established."

This Court has undoubtedly intimated, but in very carefully guarded language, that under certain circumstances such an endorsement as is now found on these four certificates would protect a holder of such certificates who, in good faith and for a fair value, had purchased the certificate, *provided*, the certificate bore the endorsement at the time he first saw it.

But that decision cannot have any bearing upon the present case in favor of the defendant corporation. It has no reference to controversies between the original parties.

The defendant corporation and its officers had no right to deprive the appellant of an opportunity of showing:—

1. That Cowdry was nothing more than the agent of Blumenburg, or—

2. That he was not a *bona fide* holder, or—

3. That he himself wrote the assignment over the signature of the attorney of the appellant, or—

4. That he was a co-partner of Blumenburg in the original conspiracy.

But now, by the wrongful action of the servants of the defendant, the appellant has been wholly cut off from this privilege and right, and is prevented from recovering this money which all will agree belongs to him. The case of *Cowdry* vs. *Vandenburg* is therefore an authority in favor of the appellant and against the corporation.

It is therefore submitted that the judgment of the Court of Claims should be reversed, and that the cause should be remanded to the Court of Claims with directions to render a judgment in favor of the appellant.

ENOCH TOTTEN,
For Appellant.